



SPF response to Additional Dwelling Supplement: Proposals for Change

Timelines

1 Do you think that the proposed amendments provide for the Scottish Government's intended change?
Yes

2 If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views:

We agree that the draft legislation achieves the government's proposed changes. We had proposed supporting an 'exceptional circumstances' clause, but this has not been adopted.

Inherited Property

3 Do you think that the proposed amendments provide for the Scottish Government's intended change?
Yes

4 If not, what amendments would you propose to the draft legislation and on what basis?
Please give us your views:

We question whether the proposed relief will actually assist many purchasers, because the time between entering into a contract for the purchase of property in Scotland (concluding missives) and completing the purchase can be quite short, generally 6 - 8 weeks. We would suggest that properties inherited in the 3 years before missives for the purchase of a new main residence should not be taken into account for ADS purposes. This would give an equivalent measure of relief to that which is available under the SDLT rules. The draft legislation therefore achieves the government stated intentions but we feel that in general, we believe a longer time period would be appropriate to meet the concerns which have been expressed about inherited property.

5 Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment? Please give us your views:

We do not think it is necessary to add further legislative measures - there are already extensive anti-avoidance provisions available under LBTT legislation.

Small Shares

6 Do you think that the proposed amendments provide for the Scottish Government's intended change?
Yes

7 If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views:

We believe the government has set the correct framework to deal with the issue of relatively small shares in additional dwellings. One unintended consequence of the change is that acquiring a further share in a jointly owned property could become subject to ADS, if the initial share has a value of less than £40,000.

Currently there is no ADS charge if an additional share in a jointly owned property is acquired, and that position should be preserved.

8 Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment? Please give us your views:

No, for the reason we gave earlier - we do not think there is a requirement for additional specific anti-avoidance legislation in this area.

Divorce or Separation

9 Do you think that the proposed amendments provide for the Scottish Government's intended change?
No

10 If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views:

The relief as drafted only seems to refer to court orders and agreements relating to the dissolution of civil partnerships (paragraph 5 of Schedule 1). It also needs to refer to paragraph 4 of Schedule 1 which deals with divorce. We also believe the relief should be extended to the ending of cohabitant relationships. Parties may apply to the court for an award under s.28 of the Family Law (Scotland) Act 2006, or enter into an agreement in connection with the ending of the cohabiting relationship, and we recommend that the relief should apply in these circumstances. If a departing spouse or civil partner buys a new main residence in joint names with a new partner it appears that ADS would still be payable because the new partner would not be able to claim the proposed new relief. We believe the relief should be treated as applying to both joint purchasers in these circumstances. Alternatively it could make more sense to disregard properties in which a joint interest had to be retained rather than making such properties the subject of a relief.

Joint Buyers/Economic Unit Provisions

11 Do you think that the proposed amendments provide for the Scottish Government's intended changes?
Yes

12 If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views:

This will still potentially catch some joint homebuyers intending to exit an interest in an additional dwelling, but unable to do so in time to avoid an ADS charge despite best intentions because there is a challenging market in which to dispose of properties. An exceptional circumstances clause may have helped under this scenario. Local Authorities

13 Do you think that the proposed amendments provide for the Scottish Government's intended change?
No

14 If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views:

We recognize the challenge of setting appropriate legislation to define affordable housing. It will be important to include homes intended for Mid-Market Rent within the scope of this legislation. There can be anomalies in government legislation in respect of affordable housing. The current private Rented Sector Rent cap legislation includes MMR within the scope of the PRS rent cap, yet RSLs are uncapped (as of 1 April). Despite these challenges we believe the new relief should apply to all circumstances where a local authority is buying housing stock to be used for affordable housing, and not just where funding is provided under section 2 of the Housing (Scotland) Act 1988. There are many circumstances where local

authorities purchase such housing without receiving funding under section 2, and the new relief should be extended to those circumstances as well.

Impact Assessments

15 Do you think that the proposed amendments will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

No

16 If so, please give us your views.

Please give us your views:

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: Scottish Property Federation